

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

UNITED STATES OF AMERICA	§	
	§	CASE NO. 7:08-cv-65
v.	§	(Lead Case)
	§	
1262.92 ACRES OF LAND, MORE OR	§	TRACT NO. RGV-RGC-2016
LESS, SITUATED IN STARR COUNTY,	§	(Expired right-of-entry easement)
TEXAS, AND DAVID GUERRA, ET AL.,	§	

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UNITED STATES OF AMERICA	§	
	§	CASE NO. 7:08-cv-382
v.	§	(Member Case)
	§	
9.07 ACRES OF LAND, MORE OR LESS,	§	TRACT NO. RGV-RGC-2016
SITUATED IN STARR COUNTY, TEXAS;	§	(Fee simple interest)
AND ESTATE OF LOUISE T. GUERRA,	§	
ET AL.,	§	

**UNITED STATES' RESPONSE TO THE COURT'S ORDER  
REQUESTING STATUS UPDATE**

**COMES NOW** the United States of America (hereinafter “United States”), and in response to the District Court’s October 17, 2018 Order to inform the Court on the status of the case:

**PROCEDURAL BACKGROUND**

On February 8, 2008, the United States filed Civil Action No. 7:08-cv-065 (the “right-of-entry case”), condemning a temporary (180-day) right-of entry access easement in Starr County, Texas for the border fence project. [Doc. No. 1 & 2, in Civil No. 7:08-cv-065]. On March 14, 2008, the United States deposited \$100.00 into the Court’s registry as its estimated just compensation for the temporary easement.<sup>1</sup> [Doc. No. 8, in Civil No. 7:08-cv-065]. The easement, believed to be on property owned by David H. Guerra, expired on September 10, 2008.

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<sup>1</sup> Title to the temporary easement vested in the United States on March 14, 2008—the date the estimated just compensation was deposited into the Court’s registry—and expired 180 days later on September 10, 2008. *See* 40

On February 22, 2008, David H. Guerra filed an Answer to the United States' Complaint in Condemnation and Declaration of Taking. [Doc. No. 6, in Civil No. 7:08-cv-065].

On December 30, 2008, the United States filed Civil Action No. 7:08-cv-382 (the "takings case"), condemning a fee simple interest in 9.07 acres, more or less in Starr County, Texas—identified as Tract RGV-RGC-2016—for the construction of the border fence. [Doc. No. 1 & 2, in Civil No. 7:08-cv-382]. On February 25, 2009, the United States deposited \$25,700.00 into the Court's registry as its estimated just compensation for Tract RGV-RGV-2016.<sup>2</sup> [Doc. No. 4, in Civil No. 7:08-cv-382]. At the time of taking, the United States believed that David H. Guerra was the owner of Tract RGV-RGC-2016. [Doc. No. 2-2, at 14, in Civil No. 7:08-cv-382].

On October 12, 2012, the United States filed a status report in the above two cases, in response to the Court's order. [Doc. No. 21, in Civil No. 7:08-cv-065; Doc. No. 11, in Civil No. 7:08-cv-382]. Therein, the United States explained (1) the need to consolidate Civil No. 7:08-cv-065 with Civil No. 7:08-cv-382 due to common ownership of the land involved, and (2) the United States' expectation that it would file an Amended Declaration of Taking once the final title and survey work was completed. [*Id.*]. On November 7, 2012, the Court granted the United States' unopposed motion to consolidate Civil No. 7:08-cv-065 and Civil No. 7:08-cv-382 because both cases involve land owned by David H. Guerra.<sup>3</sup> [Doc. No. 23 & 24].

On April 19, 2013, landowner David H. Guerra filed an Answer in Consolidated Civil No. 7:08-cv-065. [Doc. No. 25].

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U.S.C. § 3114(b) ("On filing the declaration of taking and depositing in the court, to the use of the persons entitled to the compensation, the amount of the estimated compensation stated in the declaration—(1) title to the estate or interest specified in the declaration vests in the Government; (2) the land is condemned and taken for the use of the Government; and (3) the right to just compensation for the land vests in the persons entitled to the compensation.").

<sup>2</sup> See *supra* note 1 (citing 40 U.S.C. § 3114(b)).

<sup>3</sup> All reference to filings after November 8, 2012 refer to Consolidated Civil No. 7:08-cv-065.

On August 30, 2013, the United States filed a supplemental status report, explaining that it could not yet predict when the Amended Declaration of Taking would be filed due to delays in obtaining the final surveys and title work for Tract RGV-GRC-2016. [Doc. No. 27].

In 2015, the United States worked with landowner David H. Guerra, via disclaimers and motions, to dismiss deceased parties and parties inadvertently identified as having an interest in the subject property. [Doc. No. 30, 34, 37, 38].

### **ANTICIPATED NEXT STEPS**

The United States plans to take the following steps to resolve this case:

(1) File an Amended Declaration of Taking (“ADT”) and Amended Complaint in Condemnation (“Amended Complaint”) in order to (a) clarify the description and plat of the land acquired based on finalized surveys and title examination results; and (b) clarify that the land taken did not include water distribution and drainage systems. At that time, the United States anticipates the Parties will resume their discussions regarding just compensation.

(2) The United States advises the Court that, in FY 2019, it expects to acquire additional property from this landowner for the border fence project.

Respectfully submitted,

**FOR DEFENDANTS:**

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**Attorney-in-Charge for Plaintiff**

**CERTIFICATE OF SERVICE**

I certify that on November 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and that our office will send a copy of this document on November 9 and 13th, 2018 via regular mail to all parties who have made an appearance and/or for whom the United States has contact information.

**s/ Christopher D. Pineda**  
CHRISTOPHER D. PINEDA  
Assistant United States Attorney